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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1970

between

THRALL CAR MANUFACTURING COMPANY,

VINEYARD CAR CORPORATION

and

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Covering sale and purchase of 75 Unit Train Gondolas

CONDITIONAL SALE AGREEMENT dated as of May 1, 1970, among the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Manufacturer as more particularly set forth in Article 27 hereof), VINEYARD CAR CORPORATION, a New York corporation (hereinafter called the Company), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (hereinafter called the Guarantor or the Lessee).

WHEREAS, the Manufacturer agrees to construct, sell and deliver to the Company, and the Company agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS, the Company is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Company under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell f.o.b. point of origin and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and

accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be a new standard-gauge unit of railroad equipment constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer, the Company and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company, at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however,* that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorties and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before December 15, 1970 (unless such date is extended by the Company, the Guaran-

tor and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion (a) the Vendor, the Company and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and (b) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Manufacturer shall mutually determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Guarantor), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of a unit or a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or authorized representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and are marked in accordance with the provisions of Article 9 hereof; *pro-*

vided, however, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 3 of Annex A hereto.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company shall assume with respect thereto the responsibility and risk of loss or damage.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made under this Agreement and the Conditional Sale Agreements referred to in Item 4 of Annex A hereto (hereinafter called the Other Agreements), would, but for the provisions of this sentence, exceed $3,936,534 (or such higher amount as the Company may at its option agree to), the Manufacturer (and any assignee of the Manufacturer) and the Guarantor will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Company, as will, after giving effect to such exclusion and any concurrent exclusion under the Other Agreements, reduce such aggregate Invoiced Purchase Prices under both this Agreement and the Other Agreements to not more than $3,936,534 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from Manufacturer for cash on the date such unit or units would

otherwise have been settled for under this Agreement either directly, or, if the Manufacturer and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of settlement therefor, the Equipment shall be divided into not more than two groups of units of the Equipment (each such group being hereinafter called a Group) unless the Company, the Guarantor and the Manufacturer shall otherwise agree; *provided, however,* if the total Purchase Price of the Equipment is less than $500,000, the Equipment shall all be settled for in one Group. The term "Closing Date" with respect to any Group shall mean such date (not earlier than June 15, 1970 and not later than December 15, 1970), occurring not less than five business days following presentation by the Manufacturer to the Company and the Guarantor of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer by written notice delivered to the Guarantor, the Company and the Assignee (as hereinafter defined) at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized to remain closed.

The Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group (i) an amount equal to 20.9% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 79.1% of the aggregate of the Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of all units of railroad

equipment covered by the Other Agreements for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced price being herein called the Invoiced Purchase Prices) exceeds (y) the sum of $3,110,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a) and clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreements (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); *provided, however,* that if settlement is also being made on such Closing Date for units of railroad equipment under the Other Agreements, the amount payable pursuant to clause (ii) of this subparagraph (a) shall be that proportion of the Excess Amount which the Invoiced Purchase Prices payable on such Closing Date under this Agreement is of the aggregate of all the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreements; and

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for all Groups being herein called the Conditional Sale Indebtedness) shall be payable on December 15, 1975, and subsequent instalments shall be payable semiannually thereafter on June 15 and December 15 of each year to and including June 15, 1985 (or if any

such date is not a business day on the next preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Conditional Sale Indebtedness was incurred at the rate of 9⅜% per annum and such interest shall be payable, to the extent accrued, on June 15 and December 15 of each year, commencing December 15, 1970 (or if any such date is not a business day on the next preceding business day). The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Guarantor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Company will pay interest at the rate of 10¼% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price for each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an Agreement and Assignment dated the date hereof between the Manufacturer and Bankers Trust Company, as Agent (such Agreement and Assignment being hereinafter called the Assignment and such assignee being herein called the Assignee or the Vendor as indicated in Article 27 hereof).

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 3 with respect to any Group of the Equipment is specifically subject to the following conditions:

(a) the documents required by Section 5 of the Assignment shall have been delivered as therein indicated;

(b) no event of default of the Guarantor specified herein nor an Event of Default (as defined in the Lease) of the Lessee under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default or an Event of Default shall have occurred and be continuing;

(c) the Company shall have received (i) the opinions of counsel required by §§ 14 and 15 of the Lease and (ii) such other documents as the Company may reasonably request; and

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease but the rights of the Lessee and its permitted assigns (the Lessee hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however,* that so long as the Lessee shall not be in default under the Lease or under this Agreement in its capacity as Guarantor or otherwise, the Lessee shall be entitled to possession and use of the Equipment. The Company hereby agrees that it will not exercise any of the remedies provided in the case of an Event of Default under and as defined in the Lease unless it shall notify the Vendor and the Guarantor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default as specified in Article 17 hereof shall have occurred and be continuing, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used upon the lines of railroad owned or operated by the Lessee or any affiliate of the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic but only upon and subject to all the terms and conditions of this Agreement; *provided, however,* that the Company agrees not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Com-

pany may also lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and provided such lessee shall expressly agree to abide by the proviso to the first sentence of this paragraph. A copy of such lease shall be furnished to the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. *Indemnities and Warranties.* The Company agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation

thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment after delivery to and acceptance thereof by it hereunder.

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Item 3 of Annex A hereto.

ARTICLE 15. *Patent Indemnities.* Except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer will indemnify, protect and hold harmless the Company and the Guarantor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Guarantor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Guarantor likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use

in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Guarantor and not developed or purported to be developed by the Manufacturer, or article or material specified by the Guarantor and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Guarantor every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Guarantor and not developed or purported to be developed by the Manufacturer and used by the Manufacturer in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Manufacturer further agrees to execute and deliver to the Guarantor all such further assurances as may be reasonably requested by the Guarantor more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Guarantor of any claim known to the Manufacturer on the basis of which liability may be charged against the Guarantor hereunder, and the Company and the Guarantor will each give notice to the Manufacturer of any claim known to either of them, as the case may be, on the basis of which liability may be charged against the Manufacturer hereunder.

ARTICLE 16. *Assignments.* The Company will not sell, assign or transfer its rights under this Agreement or, except

as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder (and the Company shall, in such event, remain liable for all of the obligations of the Company hereunder), but shall be subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Company and the Guarantor).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and to deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 14 and 15 hereof and Annex A hereto, or relieve the Company or the Guarantor of their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 hereof or in the last paragraph of this Article 16 or in Annex A hereto, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such

assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee.

The Company and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all of or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company or the Guarantor, as the case may be, against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the words marked on each side of each unit of the Equipment to indicate the title of an assignee to the Equipment with such words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Manufacturer. The cost of marking such words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) shall be borne by the Guarantor.

The Company and the Guarantor will, in connection with settlement for any Group of the Equipment, deliver to the assignee, at the time of delivery by the Guarantor of notice fixing the Closing Date with respect to such Group, all documents required by the terms of the assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

Notwithstanding the provisions of the last paragraph of Article 3 hereof, if the Manufacturer shall not receive on the Closing Date with respect to a Group of the Equipment the aggregate Purchase Price in respect of such Group, the Manufacturer will promptly notify the Company and the Guarantor of such event and, if such amount shall not have been previously paid, such Group of the Equipment shall be excluded from this Agreement and the Guarantor will, not later than 90 days after such Closing Date, purchase such Group from the Manufacturer for cash, together with inter-

est thereon from such Closing Date to the date of payment by the Guarantor at the average prime rate of interest of the five largest New York City banks in effect at 11:00 a.m., New York time, on such Closing Date.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for six days; or

(b) The Company or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Company or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or rereceiver or receivers appointed for the Company or the

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease but the rights of the Lessee and its permitted assigns (the Lessee hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however,* that so long as the Lessee shall not be in default under the Lease or under this Agreement in its capacity as Guarantor or otherwise, the Lessee shall be entitled to possession and use of the Equipment. The Company hereby agrees that it will not exercise any of the remedies provided in the case of an Event of Default under and as defined in the Lease unless it shall notify the Vendor and the Guarantor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default as specified in Article 17 hereof shall have occurred and be continuing, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used upon the lines of railroad owned or operated by the Lessee or any affiliate of the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic but only upon and subject to all the terms and conditions of this Agreement; *provided, however,* that the Company agrees not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Com-

pany may also lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and provided such lessee shall expressly agree to abide by the proviso to the first sentence of this paragraph. A copy of such lease shall be furnished to the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. *Indemnities and Warranties.* The Company agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation

thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment after delivery to and acceptance thereof by it hereunder.

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Item 3 of Annex A hereto.

ARTICLE 15. *Patent Indemnities.* Except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer will indemnify, protect and hold harmless the Company and the Guarantor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Guarantor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Guarantor likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use

in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Guarantor and not developed or purported to be developed by the Manufacturer, or article or material specified by the Guarantor and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Guarantor every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Guarantor and not developed or purported to be developed by the Manufacturer and used by the Manufacturer in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Manufacturer further agrees to execute and deliver to the Guarantor all such further assurances as may be reasonably requested by the Guarantor more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Guarantor of any claim known to the Manufacturer on the basis of which liability may be charged against the Guarantor hereunder, and the Company and the Guarantor will each give notice to the Manufacturer of any claim known to either of them, as the case may be, on the basis of which liability may be charged against the Manufacturer hereunder.

ARTICLE 16. *Assignments.* The Company will not sell, assign or transfer its rights under this Agreement or, except

as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder (and the Company shall, in such event, remain liable for all of the obligations of the Company hereunder), but shall be subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Company and the Guarantor).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and to deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 14 and 15 hereof and Annex A hereto, or relieve the Company or the Guarantor of their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 hereof or in the last paragraph of this Article 16 or in Annex A hereto, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such

assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee.

The Company and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all of or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company or the Guarantor, as the case may be, against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the words marked on each side of each unit of the Equipment to indicate the title of an assignee to the Equipment with such words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Manufacturer. The cost of marking such words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) shall be borne by the Guarantor.

The Company and the Guarantor will, in connection with settlement for any Group of the Equipment, deliver to the assignee, at the time of delivery by the Guarantor of notice fixing the Closing Date with respect to such Group, all documents required by the terms of the assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

Notwithstanding the provisions of the last paragraph of Article 3 hereof, if the Manufacturer shall not receive on the Closing Date with respect to a Group of the Equipment the aggregate Purchase Price in respect of such Group, the Manufacturer will promptly notify the Company and the Guarantor of such event and, if such amount shall not have been previously paid, such Group of the Equipment shall be excluded from this Agreement and the Guarantor will, not later than 90 days after such Closing Date, purchase such Group from the Manufacturer for cash, together with inter-

est thereon from such Closing Date to the date of payment by the Guarantor at the average prime rate of interest of the five largest New York City banks in effect at 11:00 a.m., New York time, on such Closing Date.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for six days; or

(b) The Company or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Company or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or rereceiver or receivers appointed for the Company or the

Guarantor or for the property of the Company or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) An event of default shall occur under one or more of the Other Agreements;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company and the Guarantor and upon compliance with any legal requirements then in force and applicable to such

action by the Vendor, (i) subject to the rights of the Lessee referred to in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Company and the Guarantor each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Purchase Price and such interest shall bear interest from the date of such declaration at the rate of 10¼% per annum and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company or the Guarantor wherever situated. The Company or the Guarantor, as the case may be, shall promptly notify the Vendor in writing of any event which has come to its attention which constitutes, or would constitute but for the giving of notice and/or lapse of time, an event of default under this Agreement.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default or notice of termination of the Lease by notice to the Company and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no Declaration of Default or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company and the Guarantor that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. *Remedies.* At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor take, or cause to be taken by its agent or agents, immediate possession of the Equipment, or any unit thereof, without liability to return to the Company or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Company or anyone having such possession and use and for such purpose may enter upon the premises of the Company or the Guarantor or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or the Guarantor, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same. For such purpose the Guarantor agrees to furnish without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement

between the parties, and upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Company and/or the Guarantor requiring specific performance hereof; *provided, however,* that if the Guarantor is in possession of the Equipment, the Vendor shall be entitled to such a decree only against the Guarantor. The Company and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may, at its election, but only if such election is expressed in writing and notice is given as hereafter in this paragraph provided, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment together with interest thereon accrued and unpaid and all other payments due under this Agreement and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Company and the Guarantor by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Company in the Equipment will thereupon terminate and all payments made by the Company or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Company, before

the expiration of the 30-day period described in the proviso below should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company; and *provided, further, however,* that if the Company or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

At any time during the continuance of a Declaration of Default, the Vendor with or without the retaking of possession thereof, at its election and upon reasonable notice to the Company, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Guarantor) claiming by, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if prior to such sale or prior to the making of a contract for such sale, the Company should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the

possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine; *provided, however,* that the Company and the Guarantor shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale it shall be subject to the right of the Company and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Company hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except as such exercise may ex-

pressly be limited herein. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others, except as such exercise may expressly be limited herein. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company and the Guarantor. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company or, if the Guarantor shall be entitled thereto pursuant to the last paragraph of Article 6 hereof, the Guarantor.

The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including

attorneys' fees and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Company and the Guarantor will cause this Agreement, the first assignment here-

of and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company and the Guarantor will promptly furnish to the Vendor evidences of such filing, recording or deposit, and an opinion or opinions of counsel with respect thereto, satisfactory to the Vendor. This Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance of any unit of the Equipment.

ARTICLE 22. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer and the Guarantor) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), or any instrument supplemental hereto or thereto, including all fees and expenses of special counsel for the first assignee of this Agreement and of special counsel for the Investor referred to in the Assignments, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purpose of this Article 22, if the first assignee is an agent, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Company, c/o Kuhn, Loeb & Co., 40 Wall Street, New York, N. Y. 10015, attention of Henry Bevers, Esq.,

(b) to the Guarantor, at 114 West Eleventh Street, Kansas City, Missouri 64105, attention of the Executive Vice President,

(c) to the Manufacturer, at the address specified in Item 2 of Annex A hereto,

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief place of business is in the State of New York.

ARTICLE 24. *Immunities.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company, the Guarantor or the Assignee, or the Manufacturer, or against any principal or principals (disclosed or undisclosed) of the Company if the Company is acting in an agency or nominee capacity, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or principals being forever released as a condition of and as consideration for the execution of this Agreement.

ARTICLE 25. *Effect and Modification of Agreement.* This Agreement, and the annexes relating hereto, exclu-

sively and completely state the rights and agreements of the Vendor, the Company and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Company and the Guarantor.

ARTICLE 26. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 27. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 28. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of May 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their duly authorized officers or officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

THRALL CAR MANUFACTURING COMPANY,

by .....
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

VINEYARD CAR CORPORATION,

by .....
President

[CORPORATE SEAL]

Attest:

.....
Secretary

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,

by .....
Executive Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this 26th day of May, 1970, before me personally appeared JEROME A. THRALL, to me personally known, who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My commission expires January 7, 1973

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 8th day of ~~May~~ JUNE, 1970, before me personally appeared M. KENNY, to me personally known, who, being by me duly sworn, says that he is President of VINEYARD CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

BERNARD PERIN
NOTARY PUBLIC, State of New York
No. 41-8025475
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1972

STATE OF MISSOURI }
COUNTY OF JACKSON } ss.:

On this 27th day of May, 1970, before me personally appeared L. O. Pruitt, to me personally known, who, being by me duly sworn, says that he is an Executive Vice President of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edna Adams L. Dollins
Notary Public

[NOTARIAL STAMP]

My commission expires June 23, 1972

ANNEX A—THRALL

Item 1: Thrall Car Manufacturing Company, a Delaware corporation.

Item 2: P. O. Box 218, Chicago Heights, Illinois 60411.

Item 3: The Manufacturer warrants that the units of the Equipment will be built in accordance with the Specifications and other requirements, specifications and standards set forth or referred to in Article 1 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and that the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Company or the Guarantor and not manufactured by the Manufacturer), workmanship and design (except as to designs specified by the Company or the Guarantor and not developed or purported to be developed by the Manufacturer) under normal use and service, the Manufacturer's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to the Company, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. The Manufacturer shall not be liable for indirect or consequential damages resulting from defects in material, design, construction or workmanship. **The foregoing war-**

ranty is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 15 of the Agreement, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. The Manufacturer further agrees with the Company and the Guarantor that the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall not be deemed a waiver or a modification by the Company of any of its rights under this Item 3.

Item 4: The two Conditional Sale Agreements dated as of May 1, 1970, among the Company, the Guarantor and General Motors Corporation (Electro-Motive Division) and The Darby Products of Steel Plate Corporation, respectively.

ADDITIONAL AGREEMENT

It is agreed that the last paragraph of Article 2 of the Agreement shall not be applicable, and that the following paragraph is applicable in lieu thereof:

"On delivery of each of the Units of Equipment hereunder to the carrier F.O.B., Chicago Heights, Illinois, the Guarantor shall assume with respect thereto the responsibility and risk of loss or damage until delivery to and acceptance thereof on behalf of the Company."

ANNEX B—THRALL

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers	Unit Base Price	Total Base Price	Time and Place of Delivery
150-Ton Unit Train Gondolas	~~GN-150-72-100~~ GN-150-72-100	Chicago Heights, Illinois	75	KCS 404004, KCS 404012, KCS 404021, KCS 404039, KCS 404047, KCS 404055, KCS 404063, KCS 404071, KCS 404080, KCS 404098, KCS 404101, KCS 404110, KCS 404128, KCS 404136, KCS 404144, KCS 404152, KCS 404161, KCS 404179, KCS 404187, KCS 404195, KCS 404209, KCS 404217, KCS 404225, KCS 404233, KCS 404241, KCS 404250, KCS 404268, KCS 404276, KCS 404284, KCS 404292, KCS 404306, KCS 404314, KCS 404322, KCS 404331, KCS 404349, KCS 404357, KCS 404365, KCS 404373, KCS 404381, KCS 404390, KCS 404403, KCS 404411, KCS 404420, KCS 404438, KCS 404446, KCS 404454, KCS 404462, KCS 404471, KCS 404489, KCS 404497, KCS 404501, KCS 404519, KCS 404527, KCS 404535, KCS 404543, KCS 404551, KCS 404560, KCS 404578, KCS 404586, KCS 404594, KCS 404608, KCS 404616, KCS 404624, KCS 404632, KCS 404641, KCS 404659, KCS 404667, KCS 404675, KCS 404683, KCS 404691, KCS 404705, KCS 404713, KCS 404721, KCS 404730, KCS 404748	$29,168.34*	$2,187,625.50	Prior to August 31, 1970, at Bloomburg, Texas

* FOB: CHICAGO HEIGHTS, ILLINOIS. (UNITS ARE TO BE DELIVERED FREIGHT CHARGES COLLECT)

ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

VINEYARD CAR CORPORATION

and

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Dated as of May 1, 1970

LEASE OF RAILROAD EQUIPMENT, dated as of May 1, 1970, between VINEYARD CAR CORPORATION, a New York corporation (hereinafter called the Lessor), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee are entering into three Conditional Sale Agreements each dated as of May 1, 1970 (hereinafter individually called a Conditional Sale Agreement and together called the Conditional Sale Agreements), with GENERAL MOTORS CORPORATION (Electro-Motive Division), THRALL CAR MANUFACTURING COMPANY and THE DARBY PRODUCTS OF STEEL PLATE CORPORATION, respectively (hereinafter individually called a Manufacturer and together the Manufacturers), wherein the Manufacturers have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Manufacturers have assigned or will assign their respective interests in the Conditional Sale Agreements to BANKERS TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreements on or prior to December 15, 1970 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under a Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under such Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the appropriate Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the appropriate Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments, payable on the business day next preceding June 15 and December 15 in each year commencing with the business day next preceding December 15, 1970. The first such semiannual payment shall be in an amount equal to 0.023333% of the Purchase Price (as such term is defined in the Conditional Sale Agreement pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the appro-

priate Conditional Sale Agreement to December 15, 1970; the next nine semiannual payments shall each be in an amount equal to 4.200000% of the Purchase Price of each such Unit; and the last 20 such semiannual payments shall each be in an amount equal to 6.700417% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee, (i) to make such of the payments provided for in this Lease (including but not limited to the payments required under § 6 hereof) as will satisfy the obligations of the Lessor to the Vendor under the Conditional Sale Agreements accrued at the time such payments are due hereunder, for the account of the Lessor, care of Bankers Trust Company, One Battery Park Plaza, New York, New York 10015, attention of Corporate Trust Division, and with power to Bankers Trust Company to apply such payments first to Conditional Sale Indebtedness and thereafter to other obligations to the Vendor under the Conditional Sale Agreements and (ii) to pay any balance of the payments provided for in this Lease after deduction of the amount payable pursuant to the foregoing clause (i) to the Lessor directly at its offices c/o Kuhn, Loeb & Co., 40 Wall Street, New York, New York 10005, attention of Henry C. Bevers, Esq. The provisions of this paragraph relating to payments to satisfy the obligations of the Lessor are made for the benefit of the Vendor under the Conditional Sale Agreements and certain persons who have beneficial interests in the Conditional Sale Agreements and shall not, until such time as such obligations are satisfied, be modified without the consent of the Vendor and any persons holding such beneficial interests.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason

of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturers or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to, or loss of possession or loss of use of, or destruction of, all or any of the Units from whatsoever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or lack of right, power or authority of the Lessor to enter into this lease, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under a Conditional Sale Agreement, are subject to the rights of the Vendor under the Conditional Sale Agreements. If an event of default should occur under a Condi-

tional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease or under a Conditional Sale Agreement in its capacity as guarantor or otherwise. If a Declaration of Default (as defined in the Conditional Sale Agreements) should be made under a Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of such Conditional Sale Agreement that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease but such termination shall not affect or alter any obligation of the Lessee under the Conditional Sale Agreements in its capacity as Guarantor or otherwise.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex B to the appropriate Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"BANKERS TRUST COMPANY,
NEW YORK, NEW YORK, AGENT-OWNER"

or other appropriate words designated by the Lessor or the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise

any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where the Conditional Sale Agreements and this Lease shall have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may cause the Units to be lettered "Kansas City Southern," "KCS" or with the name of any affiliate of the Lessee or to bear other names, initials or insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal, Canadian (Dominion or Provincial) or Mexican taxes (other than any federal, Canadian [Dominion or Provincial] or Mexican income tax [to the extent that the Lessor receives credit therefor against its United States federal income tax liability] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be

payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,* that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor or otherwise pursuant to Article 10 of the Conditional Sale Agreements not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which

the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor

shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision hereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 70% effective Federal tax rate and the highest effective state and local income tax and/or excess profits tax rates generally applicable to or imposed upon individuals, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 70% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any cove-

nant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, or the recapture of, all or any portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of or the recapture of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the fourth paragraph of § 15 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any pro-

spective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* Subject to the obligations of the Lessor to the Vendor under the Conditional Sale Agreements as set forth in the second paragraph of § 2, this Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 2, 5, 6, 9 and 15) shall inure to the benefit of the Lessor's assigns (including the partners of any such assignee if such assignee is a partnership). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreements in the capacity as guarantor or otherwise the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreements, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims

against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreements in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Conditional Sale Agreements. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreements) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may:

(i) with respect to Units which are locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease in respect of such Units, elect to purchase all, but not fewer than all, such Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term; and

(ii) with respect to Units which are not locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond December 15, 2000, at a rental payable in 10 semiannual payments, each in an amount equal to the following percentages of the Purchase Price of such Unit: during the first five-year period, 2.7785%; during the second five-year period, 1.8520%; and during the final five-year period, 1.3895%; such semiannual payments to be made on the business day next preceding December 15 and June 15 in each year of the applicable extended term

the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor

shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision hereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 70% effective Federal tax rate and the highest effective state and local income tax and/or excess profits tax rates generally applicable to or imposed upon individuals, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 70% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any cove-

nant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, or the recapture of, all or any portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of or the recapture of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the fourth paragraph of § 15 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any pro-

spective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* Subject to the obligations of the Lessor to the Vendor under the Conditional Sale Agreements as set forth in the second paragraph of § 2, this Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 2, 5, 6, 9 and 15) shall inure to the benefit of the Lessor's assigns (including the partners of any such assignee if such assignee is a partnership). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreements in the capacity as guarantor or otherwise the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreements, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims

against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreements in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Conditional Sale Agreements. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreements) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may:

(i) with respect to Units which are locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease in respect of such Units, elect to purchase all, but not fewer than all, such Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term; and

(ii) with respect to Units which are not locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond December 15, 2000, at a rental payable in 10 semiannual payments, each in an amount equal to the following percentages of the Purchase Price of such Unit: during the first five-year period, 2.7785%; during the second five-year period, 1.8520%; and during the final five-year period, 1.3895%; such semiannual payments to be made on the business day next preceding December 15 and June 15 in each year of the applicable extended term

and (b) to purchase all, but not fewer than all, of such Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will

(unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such

notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the original or any extended term of this Lease.

§ 14. *Opinion of Counsel.* On each Closing Date (as defined in the Conditional Sale Agreements), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Missouri, with adequate corporate power to enter into the Conditional Sale Agreements and this Lease;

B. the Conditional Sale Agreements and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with its terms;

C. the Conditional Sale Agreements and the first assignment thereof by the Manufacturer and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recorda-

the Conditional Sale Agreement or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14, and 15 or Annex A of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled to under this Assignment and compliance by the Company and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to

sell such unit, free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Company to pay the Purchase Price of such unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, setoff or counterclaim whatsoever; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer agrees that in any suit or proceeding brought by the Assignee to collect any instalment of the indebtedness in respect of the Purchase Price of the Equipment, or interest thereon or any other payment due under the Conditional Sale Agreement, or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Company or the Guarantor arising out of the breach by the Manufacturer of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or under Articles 14 and 15 (as modified by any Additional Agreement relating to such Article 15 set forth in Annex A to the Conditional Sale Agreement) of, or in Item 3 of Annex A to, the Conditional Sale Agreement, or by

reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Company or the Guarantor. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, setoff or counterclaim asserted by the Company or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

Except as set forth in any Additional Agreements set forth in Annex A to the Conditional Sale Agreement and except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from, and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right in or about the construction or operation of the Equipment, or any unit thereof.

The Manufacturer agrees that any amount payable to it by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim,

lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"BANKERS TRUST COMPANY,
NEW YORK, NEW YORK, AGENT-OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Manufacturer an amount equal to that portion of the Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer to the Assignee of

security title to the units of the Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor to the effect that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee and the Investor under the Finance Agreement, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid instrument binding on the Guarantor, (ii) the Conditional Sale Agreement has been duly authorized, exe-

cuted and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, stating that

(i) the Company is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Company and are valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Guarantor and are valid and binding instruments enforceable against the Guarantor in accordance with their terms;

(h) Opinion dated such Closing Date of counsel for the Manufacturer addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery of

the Conditional Sale Agreement by the Company and the Guarantor and of this Assignment by the Assignee) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(i) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be

furnished to the Assignee by the Investor named in the Finance Agreement and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and

the Guarantor) it is a valid and existing agreement binding upon the Manufacturer; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and tranferred to the Assignee or intended to to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 1, 1970, for convenience only, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

THRALL CAR MANUFACTURING COMPANY,

by .....
Vice President

[CORPORATE SEAL]

ATTEST:

.....
Assistant Secretary

BANKERS TRUST COMPANY,
as Agent,

by .....
Vice President

[CORPORATE SEAL]

ATTEST:

.....
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this 26th day of May, 1970, before me personally appeared JEROME A. THRALL, to me personally known, who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My commission expires January 7, 1973

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 21st day of ~~May~~ June, 1970, before me personally appeared C. D. BLAKELY, to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

CHRISTINE GERACE
Notary Public, State of New York
No. 24-1407147
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1971

AGREEMENT AND ASSIGNMENT

Dated as of May 1, 1970

between

THRALL CAR MANUFACTURING COMPANY

and

BANKERS TRUST COMPANY,
as Agent

AGREEMENT AND ASSIGNMENT dated as of May 1, 1970, between the corporation first named following the testimonium below (hereinafter called the Manufacturer) and BANKERS TRUST COMPANY, with offices at One Battery Park Plaza, New York, New York 10015, acting as Agent under an Agreement dated as of May 1, 1970 (hereinafter called the Finance Agreement), said Trust Company, so acting, being hereinafter called the Assignee.

WHEREAS, the Manufacturer, VINEYARD CAR CORPORATION (hereinafter called the Company), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of May 1, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as delivered to and accepted by the Company;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Manufacturer), and, except as aforesaid, in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 14 and 15 (as modified by any Additional Agreement relating to such Article 15 set forth in Annex A to the Conditional Sale Agreement) of, or in Item 3 of Annex A to,

the Conditional Sale Agreement or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14, and 15 or Annex A of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled to under this Assignment and compliance by the Company and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to

sell such unit, free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Company to pay the Purchase Price of such unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, setoff or counterclaim whatsoever; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer agrees that in any suit or proceeding brought by the Assignee to collect any instalment of the indebtedness in respect of the Purchase Price of the Equipment, or interest thereon or any other payment due under the Conditional Sale Agreement, or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Company or the Guarantor arising out of the breach by the Manufacturer of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or under Articles 14 and 15 (as modified by any Additional Agreement relating to such Article 15 set forth in Annex A to the Conditional Sale Agreement) of, or in Item 3 of Annex A to, the Conditional Sale Agreement, or by

reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Company or the Guarantor. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, setoff or counterclaim asserted by the Company or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

Except as set forth in any Additional Agreements set forth in Annex A to the Conditional Sale Agreement and except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from, and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right in or about the construction or operation of the Equipment, or any unit thereof.

The Manufacturer agrees that any amount payable to it by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim,

lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"BANKERS TRUST COMPANY,
NEW YORK, NEW YORK, AGENT-OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Manufacturer an amount equal to that portion of the Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer to the Assignee of

security title to the units of the Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor to the effect that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee and the Investor under the Finance Agreement, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid instrument binding on the Guarantor, (ii) the Conditional Sale Agreement has been duly authorized, exe-

cuted and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, stating that

(i) the Company is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Company and are valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Guarantor and are valid and binding instruments enforceable against the Guarantor in accordance with their terms;

(h) Opinion dated such Closing Date of counsel for the Manufacturer addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery of

the Conditional Sale Agreement by the Company and the Guarantor and of this Assignment by the Assignee) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(i) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be

furnished to the Assignee by the Investor named in the Finance Agreement and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and

the Guarantor) it is a valid and existing agreement binding upon the Manufacturer; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and tranferred to the Assignee or intended to to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 1, 1970, for convenience only, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

THRALL CAR MANUFACTURING COMPANY,

by .....
Vice President

[CORPORATE SEAL]

ATTEST:

.....
Assistant Secretary

BANKERS TRUST COMPANY,
as Agent,

by .....
Vice President

[CORPORATE SEAL]

ATTEST:

.....
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this 26th day of May, 1970, before me personally appeared JEROME A. THRALL, to me personally known, who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My commission expires January 7, 1973

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 21st day of ~~May~~ June, 1970, before me personally appeared C. D. BLAKELY, to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

CHRISTINE GERACE
Notary Public, State of New York
No. 24-1407147
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1971

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of May 1, 1970.

VINEYARD CAR CORPORATION,

by .....
President

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,

by .....
Executive Vice President